COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department of Telecommunications and Energy on its own Motion into the Appropriate Pricing, based upon Total Element Long-Run Incremental Costs, for Unbundled Network Elements and Combinations of Unbundled Network Elements, and the Appropriate Avoided Cost Discount for Verizon New England, Inc. d/b/a Verizon Massachusetts' Resale Services in the Commonwealth of Massachusetts	D.T.E. 01-20

AT&T'S SURREPLY IN SUPPORT OF ITS MOTION TO COMPEL VERIZON RESPONSES TO AT&T INFORMATION REQUESTS

Introduction.

AT&T Communications of New England, Inc. ("AT&T") submits this surreply in order to address two arguments put forth by Verizon Massachusetts ("Verizon") in its September 20, 2001 reply to AT&T's Motion to Compel ("Reply"). First, Verizon ignores the obvious impact of the Department's August 31, 2001 Order ("August 31 Order") and claims that AT&T's Motion to Compel Verizon Responses to AT&T Information Requests ("Motion to Compel") is not a predictable and necessary response to a recent Department order but is, instead, an abuse of administrative process. Second, Verizon persists in its stated position that it should be held to a less demanding discovery standard than that which applies to other parties to this proceeding. As discussed at more length below, neither argument is valid.

I. AT&T FILED ITS MOTION TO COMPEL AT THE APPROPRIATE TIME.

In light of the Department's August 31 Order, AT&T is justified in moving at this time to compel Verizon to provide the data underlying its Loop Cost, Switching, Digital Circuit, and Collocation Cost Models, as well as underlying data and documentation supporting Verizon's

cost estimates and information regarding Verizon's current network and operational experiences. The Department stated in its August 31 Order that "the appropriate standard under which to consider [a] Motion to Compel discovery responses is whether information requested is relevant or likely to lead to the discovery of admissible evidence."[1] Verizon, in its Reply, does not dispute the relevance of the information requested as much as it bemoans the burden involved in assembling that relevant information. However, the new discovery standard is relevance. Following the August 31 Order, discovery must be provided if it is potentially "relevant," despite the fact that its assembly and production may be burdensome. Evenhanded application of that standard requires that Verizon now be compelled to produce relevant information requested by AT&T.

Having already taken the opportunity to exploit the discovery standard articulated in the August 31 Order, Verizon now alleges that AT&T's Motion to Compel is a "belated attempt to retaliate . . ." AT&T is not retaliating but is, instead, seeking the type of information which the Department's August 31 Order for the first time makes available to all parties.

Throughout this proceeding, AT&T has acted under the reasonable assumption that parties would not be compelled to produce information if doing so would be burdensome. In prior proceedings, Verizon has frequently taken the position that it should not be required to gather information in a "special study" or otherwise provide information where doing so would be burdensome. Verizon's position has been respected by the Department, by AT&T, and by other parties. As seen in its Reply, Verizon has taken the same position in this proceeding with regard to the discovery responses Verizon presently refuses to produce. AT&T therefore had

[1] Order on Verizon's Appeal of Hearing Officer's August 8, 2001 Ruling on Motions to Compel, D.T.E. 01-20, August 31, 2001 ("*August 31, 2001 Order*") p.12.

every reason to suspect that it would not be ordered to undertake burdensome discovery obligations, nor did AT&T believe that the Department would order Verizon to produce discovery claimed to be burdensome. Consistent with that expectation, AT&T did not move at an earlier time to compel further responses by Verizon to Information Requests ATT-VZ 41-1, 4-3, 4-16, 4-29, 4-48, 4-49, 5-6, 5-9, 12-2, 14-10, 14-11, 14-14, 14-15, and 14-32.

Verizon, however, took a patently inconsistent position and moved to compel burdensome discovery by AT&T. *See* Verizon's July 5, 2001 Motion to Compel. When AT&T pointed out Verizon's inconsistent position, the Department (on appeal from the Hearing Officer's August 8, 2001 Ruling) held that discovery must be provided if "relevant or likely to lead to the discovery of admissible evidence." The Department rejected AT&T's argument that burdensome discovery should not be compelled, and stated that any discovery responses which Verizon refuses to answer on the basis of burdensomeness must be addressed in an AT&T motion to compel. *August 31 Order*, at 12, 19-20. Faced with these recent events, AT&T has established good cause[2] for any delay in filing its motion to compel responses which Verizon concedes are "relevant" but refuses to provide on the basis of burdensomeness.

In its Reply, Verizon does not, and cannot, point to any unfair prejudice that it will suffer as a result of being required to produce complete responses which concern information *directly relevant* to Verizon's own recurring cost model. Such information, like the information the Department compelled AT&T to "spread upon the record," is just as necessary to the Department's ability to evaluate the Verizon recurring cost model as it was to the Department's

[2] The Procedural Rules state that "[a] party may move for an Order to compel compliance with its discovery request. Unless otherwise permitted by the presiding officer for good cause shown, such motion shall be made no later than seven days after the passing of the deadline for responding to the request." 220 CMR 1.06(6)(c)(4).

ability to evaluate the AT&T model. In light of the fact that Verizon has the burden of proving the reasonableness of its proposed rates, the information underlying those proposals is significantly *more* important than the information Verizon has sought from AT&T.

II. EVENHANDEDNESS REQUIRES THAT THE DEPARTMENT APPLY THE SAME DISCOVERY STANDARD TO VERIZON AS IT APPLIED TO AT&T.

Verizon's primary argument in refusing to provide AT&T with the requested responses is that AT&T seeks a burdensome level of additional detailed documentation that is of only "slight" or "*de minimus* (sic) probabitive (sic) value." *Verizon Reply*, at 4, 8. (Responses to ATT-VZ 14-32, 4-48, and 5-6). This statement, however, is a concession on the part of Verizon that the requested information has relevance to the Department's review of Verizon's recurring cost model. *Id*. As described below, AT&T believes that this information is directly relevant. Under the discovery standard urged by Verizon in its July 5, 2001 Motion to Compel, and adopted by the Department with respect to Verizon's appeal, relevance is all that is needed to entitle AT&T to the requested information, and the Verizon information sought by AT&T far exceeds that minimal threshold.[3] The Department did not allow AT&T to balance the relevance of information with the burden of producing it. Evenhandedness, therefore, requires that Verizon be held to the same standard, despite its protestations to the contrary.

A. The Verizon Model Inputs Requested in ATT-VZ 14-32 Are Relevant and Must Be Produced.

Verizon's refusal to respond to VZ-ATT 14-32 is patently unreasonable. This fact is effectively illustrated by comparing Verizon's refusal to respond to VZ-ATT 14-32 with Verizon's conviction that AT&T should be compelled to produce the geocoded data set for

[3] As noted below, the information that Verizon refuses to provide is of substantially greater importance to a fair assessment of the validity of the analysis it purportedly supports than are AT&T's geocoded data.

Massachusetts. Verizon argues that the engineering surveys requested in ATT-VZ 14-32 are not "fundamental inputs" used in Verizon's cost study and Verizon, therefore, should not be required to produce them. AT&T made the same argument in relation to the requested geocoded data set which is not, itself, a fundamental input to the HAI model. In fact, the geocoded data points have little or no meaning until subjected to a clustering algorithm. Nonetheless, Verizon has insisted that AT&T be ordered to make available the entire geocoded data set, "the backup to the backup," and AT&T has agreed to do so via remote access.

Verizon complains bitterly about the burden of producing the "tens of thousands of separate pieces of information" which provide the basis for Verizon's loop cost model while at the same time demanding access to the *millions* of separate data points contained in the geocoded data set. The subject matter of the geocoded data set is raw factual information relating to a well understood concept, the location of residences. Development of that data has not required the exercise of any judgment or professional analysis. In contrast, Verizon's Loop Cost Analysis Model ("LCAM") "derives its loop plant characteristics from a survey of feeder route data conducted by Verizon MA's engineers." Verizon Direct Panel testimony at 89 (filed May 8, 2001). Despite the impact of "loop plant characteristics" on the LCAM, Verizon is refusing to provide any information about the data or measurements upon which the "Verizon MA engineers" based the "survey of feeder route data." AT&T does not even know exactly what the unnamed "Verizon MA engineers" were measuring (*i.e.*, what activities, transactions, etc). Without that information, AT&T cannot possibly evaluate the conclusions drawn from that data. This information is, therefore, highly relevant to AT&T's (indeed, the Department's) ability to assess the validity of Verizon's analysis.

In fact, because the "survey of feeder route data" incorporated in the LCAM depends on the judgment and diligence of human beings and not on the application of an algorithm, that has already been disclosed to the Department and Verizon, the data sought by ATT-VZ 14-32 is *more* important to AT&T's analysis than is the geocoded data set to Verizon's. In light of this contrast, Verizon should not now be allowed to change the rules, in the middle of the game, to avoid production of the relevant inputs upon which Verizon bases its loop length and cost estimates.

Verizon's second attempt to avoid providing information in response to ATT-VZ 14-32 is the misleading assertion that all relevant information regarding these inputs is contained in its responses to ATT-VZ 14-31 and 14-33. *Reply*, at 4. In response to ATT-VZ 14-31, Verizon provides the instructions given to the engineers regarding how to conduct the survey of feeder route data. In response to ATT-VZ 14-33, Verizon submits the survey results actually produced by the engineers. These responses are not substitutes for the information requested in ATT-14-32 – the materials (plats, network, diagrams, demand forecasts, engineering guidelines, maps, etc.) reviewed by the Verizon engineers in conducting their survey of feeder route data. These materials relied upon by the Verizon engineers form the basis of the survey results used in the Verizon cost model, just as the geocoded data set provides the basis for the clusters used in HAI 5.2a. Verizon's discovery responses to date are inadequate to address the information sought by ATT-VZ 14-32. Verizon should, therefore, be ordered to respond in full.

B. Verizon Must Identify and Document the Ten Largest DCPR Transactions as Requested in ATT-VZ 14-10, 14-11, 14-14, 14-15.

Verizon makes a similarly unreasonable argument in response to AT&T's request for information regarding the ten largest Detailed Continuing Property Record ("DCPR") system transactions. Verizon claims that each of the above-listed information requests seek data "which

was not itself used as the model's inputs," but which instead functions as inputs to the Verizon DCPR system. *See Reply*, at 6. This is a distinction without a difference. As Verizon plainly admits, at least some of the DCPR records "served as the inputs to Verizon MA's study." *Reply*, at 5. In response to AT&T's request, Verizon claims it would suffer undue burden in producing DCPR information because the "DCPR contains the official record of thousands of transactions." *Id*. This concern, however, did not stop Verizon from moving to compel production of the production of the millions of data points included in the geocoded data set. Furthermore, AT&T did not request *all* of the DCPR records; AT&T only asked that Verizon identify and produce documentation on the *ten largest* DCPR transactions in each category specified in the four AT&T data requests. Verizon's estimate of burden is based on a task AT&T never asked Verizon to undertake. AT&T needs access to the requested data in order to determine whether the summary data pulled by Verizon from the DCPR is appropriate for use in a TELRIC proceeding. The requested DCPR data is, therefore, relevant, meets the discovery standard articulated in the August 31 Order, and must be produced by Verizon.

C. Verizon Has Failed To Provide the Requested Explanation in Response to ATT-VZ 4-1.

Verizon's Reply simply reiterates its non-responsive answer to ATT-VZ 4-1. This response is no more satisfactory the second time around. In its original response to ATT-VZ 4-1, Verizon asserted that no additional documentation was available to support the inputs used in Part C-1, Section 29, Page 1 of 1, of its Cost Study. That response, however, answers only half the question. In addition to asking for documentation in support of Verizon's decision to use a figure of 12.0 BH intragroup CCS per Chanel, AT&T requested an explanation for the use of that figure. Verizon's response merely states that the input was the opinion of an unidentified product manager. This does nothing to explain the basis for the input. As discussed in Part II A,

above, information sufficient to explain human judgments is even more relevant to a party's ability to evaluate a cost model than is raw data expressing well understood facts. If Verizon expects the Department and other parties to accept 12.0 BH intragroup CCS per Chanel as part of Verizon's cost study, the reasoning behind the use of that value is certainly relevant to this proceeding and Verizon should be directed to provide that explanation.

D. Verizon Must Be Ordered to Provide Complete Responses to ATT-VZ 12-2, 4-3, 4-29, and 4-49.

Verizon makes a transparent attempt to avoid being subject to an order to produce responses by stating, in response to the above-listed information requests, that it will "supplement its response to provide additional information" without specifying what that information is or whether it is sufficient to respond completely to AT&T's requests. *See Reply*, at 6, 7, 8. If Verizon's "additional information" is sufficient to make these responses complete, then no hardship would be imposed by a Department order requiring Verizon to do just what it claims to intend. If, however, Verizon's "additional information" is *not* sufficient to respond fully to one or more requests, all parties and the Department would be forced to engage in the wasteful exercise of a second motion to compel. Verizon may not provide selected information while withholding other responsive, and relevant, information. This is simply another example of Verizon's refusal to comply with the Department's discovery standard. Verizon offers no reason as to why it cannot produce a *complete* response and, therefore, the Department should order Verizon to respond fully. The Department should not assume that Verizon's vague offer to provide "additional information" of its own choosing moots this issue.

E. Attachment 2 to ATT-VZ 5-2(l) Is Not Responsive to ATT-VZ 5-9.

Verizon has again failed to provide the information requested in ATT-VZ 5-9. In its Reply, Verizon directs AT&T to the second attachment to ATT-VZ 5-2, "Bell Atlantic Material

Standards and Engineering Guidelines for Secondary DC Distribution Systems." This guideline, however, does not give the distance between the Battery Distribution Fuse Bays and the telecommunications equipment which they serve, as explicitly requested in ATT-VZ 5-9. The only information on this topic provided by the guideline is Section 3.2 (Short Cable Runs) which states: "Power cable runs should be designed to be as short and direct as possible for economic and reliability reasons." While this single sentence addresses the question of distance in theory, *i.e.*, "as short and direct as possible," it does not provide any information on the actual distances used by Verizon in engineering the placement of its BDFBs nor does it provide the actual engineering guidelines that Verizon's engineers use to determine the distances between the BDFB and the equipment they serve. Verizon has also failed to provide any information regarding what factors are involved in Verizon engineers' decisions regarding what is "possible" when creating cable runs that are "as short and direct as possible." Verizon therefore has not provided the information requested in ATT-VZ 5-9 and should be directed to provide a complete response.

Conclusion.

For the reasons stated above and in its Motion to Compel, AT&T respectfully requests that the Department order Verizon to provide complete discovery responses to Information Requests ATT-VZ 41-1, 4-3, 4-16, 4-29, 4-48, 4-49, 5-6, 5-9, 12-2, 14-10, 14-11, 14-14, 14-15, and 14-32.

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Respectfully submitted,

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